

NO. \_\_\_\_\_

STATE OF TEXAS  
Plaintiff

v.

CONN'S, INC. and  
CONN APPLIANCES, INC.  
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR  
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE DISTRICT JUDGE:

Plaintiff, the State of Texas, acting by and through its Attorney General, GREG ABBOTT, on behalf of the interest of the general public and complains of Defendants CONN'S, INC., and CONN APPLIANCES, INC. (collectively "Conn's" or "Defendants"). Plaintiff alleges that Defendants engaged in unlawful and deceptive acts and practices in violation of the Texas Deceptive Trade Practices-Consumer Protection Act. In support thereof, Plaintiff respectfully shows the following:

**DISCOVERY**

1.1 Discovery shall be conducted under a LEVEL 2 discovery control plan pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**JURISDICTION**

2.1 This action is brought by Attorney General Greg Abbott (hereinafter the "Attorney General"), through his Consumer Protection and Public Health Division in the name of the STATE OF TEXAS, and in the public interest under the authority granted to him pursuant to §17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §17.41 *et*

*seq.*, (hereinafter the “DTPA”), upon the grounds that Defendants have engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined in, and declared unlawful by, §17.46 (a) and (b) of the DTPA.

2.2 Plaintiff seeks to enjoin Defendants from further violations of the provisions of the DTPA, pursuant to DTPA §17.47(a).

2.3 Plaintiff seeks civil penalties up to \$20,000 for each act or practice calculated to acquire or deprive money or other property from a consumer in violation of the DTPA, pursuant to DTPA §17.47(c)(1). In addition, Plaintiff seeks civil penalties up to \$250,000 for each act or practice calculated to acquire or deprive money or other property from a consumer aged 65 years older when the act or practice occurred, pursuant to §17.47(c)(2).

2.4 Plaintiff seeks reasonable attorney’s fees and court costs for prosecuting this action, as authorized by Texas Government Code § 402.006(c).

### **DEFENDANTS**

3.1 Defendant Conn’s, Inc. is a Delaware corporation doing business in Harris County, Texas, which may be served with process by serving its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3.2 Defendant Conn Appliances, Inc. is a Texas corporation doing business in Harris County, Texas, which may be served with process by serving its registered agent for service of process, Sydney K. Boone, Jr., 3295 College Street, Beaumont, Texas 77701.

### **VENUE**

4.1 Venue of this suit lies in Harris County, Texas, for the following reasons:

A. Venue is proper in Harris County, Texas, pursuant to §15.002 (a)(1) of the TEX. CIV. PRAC. & REM. CODE, because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. TEX. CIV. PRAC. & REM. CODE §15.002(a)(1).

B. Venue is also proper under DTPA §17.56 because Defendants do business in Harris County, Texas, and the transactions that form the basis of this cause of action occurred in Harris County, Texas.

### **PUBLIC INTEREST**

5.1 The Consumer Protection and Public Health Division of the Office of the Attorney General of Texas has received over 2,000 complaints from consumers regarding deceptive business practices of the Defendants. Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below. Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in the State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

### **TRADE AND COMMERCE**

6.1 Defendants have, at all times described below, engaged in conduct constituting “trade and commerce”, as those terms are defined in §17.45(6) of the DTPA.

### **ACTS OF AGENTS**

7.1 Whenever in this petition it is alleged that Defendants did any act, it is meant that:

- A. The Defendants performed or participated in the act, or
- B. The Defendants' officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendants.

### **PRE-SUIT NOTICE**

8.1 Defendants were notified by Plaintiff prior to the filing of this suit regarding the general nature of the DTPA violations that are the subject matter of this suit.

### **FACTUAL BACKGROUND**

9.1 Defendants provide retail sales, service, financing, and distribution of home appliances (*e.g.*, washers, dryers, refrigerators, stoves etc.), consumer electronics (*e.g.*, plasma TV's, digital cameras, camcorders), computers, and furniture. Conn's is headquartered in Beaumont, Texas with approximately 69 stores throughout Texas, including Harris County, Texas, as well as Oklahoma, and Louisiana. Conn's Inc. is publicly traded on the NASDAQ Exchange under the symbol CONN. Conn's and its subsidiaries have over 3,000 employees.

#### ***Conn's Extended Service and Product Replacement Warranties***

9.2 Conn's sells nationally recognized brand name appliances and electronics, such as Sony, Samsung, Kodak, Whirlpool, Frigidaire, Maytag, Serta, Simmons, etc. Generally for these products, the manufacturers offer their own manufacturer's warranty. The consumer generally receives a manufacturer's warranty with the product at no extra charge.

9.3 Conn's also sells extended service warranties and product replacement warranties (collectively "extended warranties") for the products they sell. Retail prices on extended

warranties sold by Conn's range from under \$100 up to \$1,000. Over 49% of Conn's customers purchased extended warranties for products sold by Conn's in 2008.

9.4 Although Conn's implies when selling the extended warranty that the consumer is dealing directly with Conn's, in fact Conn's is not a party to the warranty agreement. A third party, Federal Warranty Service Corporation ("FWS"), actually issues the warranty agreement. Conn's is the "administrator." Conn's receives a sales commission from FWS for each warranty agreement sold. Revenues on sales of extended warranties account for approximately 5% of Conn's almost \$900 million in annual sales revenues.

9.5 In addition to the sales commissions, Conn's receives a 5% commission per warranty for administrative compensation. Conn's also receives retrospective commissions, which are additional commissions paid by FWS if repair claims are less than the amount consumers paid for the extended warranties.

9.6 Conn's also provides the repair work and bills FWS for the cost of the service work Conn's performs under the extended warranty agreements. Conn Appliances, Inc. is a party to the Repair Center Agreement and Dealer Agreement with FWS during the relevant period.

9.7 According to Conn's, it performs approximately 15,000 repairs of products per month. Approximately 42% of these repairs are covered by manufacturer warranties, and Conn's bills the manufacturers for the parts and service work performed with a mark up. Approximately 45% of the repairs are covered by the extended service warranties, and Conn's bills FWS for the parts and service—with an agreed upon mark up. The remaining percentage of

repairs are not covered by any warranty and the consumers pay for the parts and repairs out of pocket.

***Conn's Uses High Pressure Sales Tactics And Misrepresentations To Sell Extended Warranties***

9.8 Employee training materials reveal that Conn's uses high pressure sales tactics and misrepresentations to sell the extended warranties to its customers. Sales associates receive a 15%-18% commission for each extended warranty they sell. Sales associates are trained by Conn's to pressure customers to buy the extended warranty, to persist even if the customer has indicated that he or she does not want the extended warranty, to "create a sense of urgency", and "overcome objections" that the customer may have. (Ex. A 000350-353; Ex. E) If the consumer indicates that he or she does not want the warranty, Conn's sales associates are instructed to "make them 'live' the service call before they tell you no" and "[t]his is done by 'painting a picture' in the customers [sic] mind, calling up that sickly feeling we all get in the pit of our stomachs when something goes wrong." (Ex. A 000352) Conn's training materials provide the following example of what the sales associate should say:

Mrs. Jones, imagine how you'll feel when you come down one morning and you open the refrigerator and everything is defrosted or you click on the big screen and 'POOF' everything goes blank? How are you going to feel then, Mrs. Jones? But you won't feel that way if you have the full coverage, will you Mrs. Jones? Why don't you let me put this protection on there for you, Mrs. Jones?

(Ex. A 00352) "If the customer still says no," the sales associate is instructed to persist in uncovering and "overcoming" the objections and is provided with a script for doing so (*Id.*)

9.9 Sales associates are encouraged to mislead consumers about the terms of the extended warranty in order to "overcome objections." For example, sales associates are trained

to tell consumers that “if they are not completely satisfied” with the extended warranty, they can cancel “at any time”—but without disclosing that the consumer must pay a hefty cancellation fee and any refund is prorated. (Ex. D) Sales associates are also instructed to tell consumers that if they buy a replacement warranty, they will receive a “new” product and imply the replaced product is covered as well, which is contrary to the terms of the actual replacement agreement. (Ex. D) An in-store brochure assures customers to “RELAX If your product fails we’ll replace it” but without disclosing the significant limitations and exclusions that the actual warranty agreement contains. (Ex. B) Sales associates are encouraged “to maximize” their income by employing these sales techniques. (Ex. A 000353)

9.10 Conn’s offers financing of the extended warranties. Conn’s also offers credit insurance products that are supposed to cover the customer’s credit account with Conn’s in the event of the customer’s death, disability, or unemployment or if the financed product is lost or damaged. Conn’s receives sales commissions on these credit insurance products as well, which account for approximately 2½% of Conn’s total revenues of approximately \$900 million.

9.11 Despite the lengthy and high pressure sales presentation, the consumer is *not* presented with a copy of the actual terms and conditions of the extended warranty or replacement plan at the time of the sale in the store. A copy of the actual agreement, which is with FWS not Conn’s, is mailed to the consumer’s home *after* the sale. (Ex. C) The actual terms and conditions of the warranty are not made available to the consumer and not disclosed by Conn’s prior to the sale. Unknown to the customer at the time of sale, the actual warranty agreement, which is mailed to the customer’s home after the sale, contains exclusions, limitations of liability, cancellation penalties, and an arbitration clause—all of which are designed to favor

FWS and Conn's not the customer. Although the consumer is led to believe he or she is dealing directly with Conn's, according to the warranty agreement, the consumer's remedy for breach of the warranty is to call an insurance company in Florida if they want to file a claim for coverage.

9.12 Moreover, the terms of the warranty agreement are not as represented to the consumer at the point of sale. While the in-store brochure states that the replacement warranty "protects you for two full years *from the date you purchased your product*" (Ex. B), the actual terms of the replacement agreement state that consumer is entitled to "no benefits" during the manufacturer's warranty" and the agreement commences only upon expiration of the manufacturer's warranty (typically, one year). In addition, at the time of sale the consumer is misled to believe that the replacement warranty is for two years and will cover the product *and* any replacement for the two year period; the actual terms of the replacement agreement, are quite different and state that the agreement "expires" upon replacement of a covered product or two years "whichever occurs first."

9.13 Consumers are also misled at the point of sale that "replacement" means they will receive a "new, unused" product (Ex. D). The actual terms of the replacement agreement, however, state that FWS may substitute a "refurbished" or "rebuilt" product and replacement may be at FWS's "discretion."

### ***Consumer Complaints***

9.14 Conn's markets the extended service warranty by claiming it is backed by Conn's "award winning service" and includes "state of the art diagnostic equipment, factory-trained technicians, a fleet of service vehicles, a huge inventory of parts, and customer service



representatives to assist you with any service-related problem.” (See [www.conns.com/conn-s-award-winning-service.html](http://www.conns.com/conn-s-award-winning-service.html)) Conn’s also promises that in an emergency, Conn’s offers same day service. (*Id.*)

9.15 Actual consumer experience of Conn’s warranty service is materially different from these representations. Consumers complain that despite Conn’s claims of “award winning” customer service, they often wait weeks or even months for parts and repairs and their calls to Conn’s customer service are not returned. Of the over 2000 complaints against Conn’s, consumers also complain, among other things:

- That shortly after they purchased a product from Conn’s the product broke down or they discovered a defect in the product after delivery. Then, after multiple attempts by Conn’s to repair the product (as many as 3 to 7 repair visits), Conn’s was unable to repair the product yet would not accept a return of the product for refund or exchange, claiming that the time period for returns has expired.
- That Conn’s delivered a defective product, which they discovered within hours after delivery but Conn’s refused to honor its refund and exchange policy.
- That Conn’s sold them “refurbished” (not new) products, which was not disclosed to them at the store, and they discovered after delivery, but Conn’s refused to accept return of the product.
- That Conn’s offered to replace a defective product which could not be repaired and then later rescinded the offer and gave the consumer the “run around.”
- That instead of replacing the defective product, as promised, Conn’s offered an “in-store” credit toward a more expensive model.
- That Conn’s refused to honor the terms of the extended service warranties it sold.
- That Conn’s refused to honor the terms of the replacement warranties it sold.
- That Conn’s refused to honor its return and exchange policy.
- That they waited for weeks or months for Conn’s service personnel to respond to service calls, that service personnel do not call them back, that service personnel do not show up

for service repair calls at the scheduled times, and service personnel are not knowledgeable about the products they service.

9.16 The following are representative examples of some of the complaints:

- An active duty military man and his family in Arlington, Texas purchased a washing machine with a four year extended warranty from Conn's shortly before Christmas 2008. The machine was defective upon delivery and Conn's technicians could not repair it but falsely reported back to Conn's that the machine had been repaired. Six weeks later, the machine was still not repaired, and the man was deployed for Army training, leaving his wife and children without a working washing machine.
- An 82-year old man and his wife in San Antonio, Texas purchased an air conditioning unit in the summer of 2008 from Conn's, which was defective upon delivery. Conn's told the man that it would replace the unit if he would bring it back to the store but when the unit was brought back he was told that since 24 hours had expired he could not return it. Conn's reneged on its promise to replace the unit and told the man "it was now a warranty issue" and he would have to wait for a new part. In the meantime, the man and his wife reported that while they waited for the new part the temperature inside their house was over 100 degrees.
- Two senior citizens who purchased a gas range complained to Conn's that every time they attempted to turn on the range, volumes of gas would envelop the kitchen with the odor of natural gas. At one point, the wife bent down to see why the burner would not light, and the burner flared out and almost burned her face. The range was defective upon delivery but Conn's would not accept it as a return without charging the couple a "restocking" fee and another delivery fee.
- A disabled woman in San Antonio, Texas who purchased a refrigerator from Conn's with an extended warranty called for repair and was told a part would have to be ordered. A month later, she was still waiting for the part without a working refrigerator and Conn's would not return her calls.
- A Beaumont woman who purchased a microwave oven and extended warranty from Conn's called to complain that the microwave had caught on fire. Conn's picked up the microwave for repairs but said that the woman would have to pay for re-installation of a new one.
- A woman and her family in Hondo, Texas purchased a lawn mower from Conn's. Upon delivery, the family placed gas in the mower, and began to cut the grass when the lawn mower shut down and would continue shutting down. Conn's refused to accept a return of the lawn mower, claiming that its return policy did not allow return of items that had been filled with gasoline.

- A 73-year old man and his wife purchased a stove from Conn's and an extended warranty. When the stove was delivered, the couple noticed that the stove would not ignite or the stove would erupt in a huge flame. Conn's technician told the couple the stove had the wrong burner caps and they would have to be replaced. Two months later, the stove was still not repaired.
- A League City man and his wife purchased a television with a replacement plan from Conn's. The television was still under warranty when it stopped working and could not be repaired. Conn's told the man that despite the replacement plan, the unit was not available but he could purchase another television with a store credit if he would pay \$300 more.
- A woman in Willis, Texas complained that Conn's has been attempting to repair her lawn tractor for four months, with seven "at home" and two "in-shop" attempts at repair, stating "The technicians have shown me that they only know how to change parts and pray that they have found the problem."
- A San Antonio couple bought a washing machine from Conn's with a four year warranty. When the washing machine broke down at Thanksgiving, the wife began calling Conn's for service. When the technician did not show up for the service call, the wife continued calling Conn's with no response. Six weeks later, Conn's still had not repaired the machine.

9.17 As a result of these ongoing deceptive acts and practices on the part of Conn's, the Houston Metropolitan Better Business Bureau recently terminated its relationship with Conn's.

### **VIOLATIONS OF THE DTPA**

10.1 Defendants, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA §17.46(a). Without limiting the foregoing, Defendants also have violated DTPA §17.46(b), by engaging in the following conduct:

- A. §17.46(a) false, misleading, or deceptive acts or practices in the course of trade or commerce.

- B. §17.46(b)(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.
- C. §17.46(b)(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not.
- D. §17.46(b)(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are another.
- E. §17.46(b)(9) advertising goods or services with intent not to sell them as advertised.
- F. §17.46(b)(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.
- G. §17.46(b)(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

### **TRIAL BY JURY**

11.1 Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

### **APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

12.1. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction as indicated below. Tex. Bus. & Com. Code §17.47. Pursuant to DTPA §17.47(b), the Court may issue temporary and permanent injunctions to prevent continuing violations of the DTPA. The Court shall issue such injunctive relief without requiring a bond. DTPA §17.47(b).

### **PRAYER**

13.1 WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause.
- B. Engaging in false, misleading, or deceptive acts or practices in the course of trade or commerce.
- C. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.
- D. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not.
- E. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are another.
- F. Advertising goods or services with intent not to sell them as advertised.
- G. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.
- H. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was

intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

- I. Failing to disclose all terms and conditions of extended warranties and product replacement programs.

13.2. The State shall not be required to post a bond.

13.3 The State shall be permitted to conduct discovery prior to the temporary injunction hearing upon shortened but reasonable notice to Defendant.

13.4 In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

- A. Adjudge against Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in an amount up to \$20,000 per violation as allowed by law pursuant to the DTPA TEX. BUS. & COM. CODE §17.47(c)(1);
- B. Adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$250,000 as allowed by law under the DTPA, TEX. BUS. & COM. CODE §17.47(c)(2), due to Defendants committing acts and practices that were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;
- C. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this court to compensate for such losses;
- D. Order Defendant to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

- E. Order the disgorgement of all sums taken from consumers by means of Deceptive Trade Practices, together with all proceeds, interest, income, profits and accessions thereto;
  - F. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law;
- 13.5. Plaintiff prays for all further relief, at law or inequity, to which it is justly entitled.

Respectfully submitted,

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